by limiting the penalty, regulating the procedure and defining the crime. At the same time the courts are protected against assault. This seems to be the sounder law and more in accord with the spirit of our institutions. It has been laid down by a number of courts with varying degrees of distinctness and is reconcilable with the actual decisions in most of the cases. *Batchelder* v. *Moore* (1871) 42 Cal. 412; *Dunham* v. *State* (1858) 6 Ia. 245.

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RECOVERY IN QUASI-CONTRACT AGAINST MUNICIPAL CORPORATIONS.—It is a fundamental proposition of the law of municipal corporations that contracts can be made by them only within the limits prescribed by the legislature. When these limits are transgressed the attempted contract is a nullity. If, however, under a void agreement benefits have been conferred upon the corporation at its request should the ordinary rules of quasi-contract be applied and recovery be allowed as if the municipality were a private corporation or does public policy demand that recovery should be denied in any form of action? The recent case of *Union Nat. Bank of Muncie* v. *Franklin School Tp.* (Ind. 1903) 68 N. E. 328, suggests the advisability of ascertaining just when reparation should be made and when not. The cases fall into more or less well defined classes, but unfortunately there is a lack of harmony in every class. Still a close inspection shows a general working principle underlying the whole subject. It is this: Municipal corporations stand in particular need of protection against their officers. In order to afford this protection the legislature has usually defined minutely the powers of these officers and the manner in which the same shall be exercised. When any act of the corporation, through its officers, will, directly or indirectly, vary in kind or degree the burden thus authorized to be placed upon the members of the corporation, public policy demands that recovery in any form shall be denied. If, however, reparation will not in any manner affect the burden upon the tax-payers the ordinary principles of quasi-contract will be applied.

The following classes embrace most of the cases that have arisen: First class—where the corporation has no power at all to make the attempted contract. This class should be subdivided as follows: (1) if reimbursement for the services or property received by the corporation would, in any manner, increase or vary the prescribed burden upon the taxpayers, there should be no recovery either in contract or quasi-contract. *Agawam Nat. Bank* v. *South Hadley* (1880) 128 Mass. 503; *Litchfield* v. *Ballou* (1884) 114 U. S. 190; contra, *Argenti* v. *San Francisco* (1860) 16 Cal. 256. (2) But if recovery by the plaintiff means in effect mere restitution of what the corporation has unlawfully received, recovery is allowed in quasi-contract. *Dill* v. *Wareham* (1844) 7 Metc, 438; *Leonard* v. *City of Canton* (1858) 35 Miss. 189. In such a case equity will not relieve the municipal corporation from such a con-

tract unless it restores the property. *Turner* v. *Cruzen* (1884) 70 Ia. 202. The denial of recovery for money paid for unauthorized bonds is an exception to this rule and rightly, for repayment of the money loaned, with interest, would exactly accomplish the prohibited purpose. *Thomas* v. *City of Richmond* (1870) 12 Wall. 349. *Litchfield* v. *Ballou*, supra.

Second class—where the corporation is authorized to contract for a particular purpose, but only in a certain manner. This class is capable of several subdivisions. (1) If the formalities required, relate to the formation of the contract, the case is treated as if it fell within the first class, and the same tests should be applied. *McDonald* v. *Mayor* (1876) 68 N. Y. 23; *Zattman* v. *San Francisco* (1862) 20 Cal. 96. The reason given is that recovery in any manner would completely nullify the statutes which prescribe the formalities as safeguards for the municipality. But see, contra, *Gas-Light Co.* v. *Memphis* (1894) 93 Tenn. 612; *Lincoln Land Co.* v. *Grant* (1898) 57 Nebr. 70. (2) If the prescribed mode of payment is the only formality disregarded in the contract, recovery in quasi-contract is allowed. *Hitchcock* v. *Galveston* (1877) 96 U. S. 341; *Chapman* v. *County of Douglas* (1882) 107 U. S. 348. The reason for the distinction is that payment in the legal way will place no more burden on the municipality than was authorized. (3) If the required formalities have not been complied with but the proper officers certify that they have, the plaintiff should recover if he were honestly misled. *Louisiana* v. *Wood* (1880) 102 U. S. 294; *Pimental* v. *San Francisco* (1863) 21 Cal. 352; *Moore* v. *Mayor* (1878) 73 N. Y. 238. (4) If some insignificant ministerial act has been omitted, recovery is not therefore denied. *Carey* v. *East Saginaw* (1889) 79 Mich. 73. There is another class of cases where the power to make the contract is given and no formalities are prescribed. If no express contract is made but benefits are conferred at request recovery may be had but it is properly on a contract implied in fact and not in quasi-contract. *Port Jervis Water Co.* v. *Port Jervis* (1893) 71 Hun 66; *Nashville* v. *Toney* (1882) 10 Lea 643; *Kramrath* v. *Albany* (1891) 127 N. Y. 575. Contra, *French* v. *Auburn* (1872) 62 Me. 452.